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INSTITUTE OF GOVERNMENTAL
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*city planning
land use*

Fremont

OPEN SPACE ELEMENT FREMONT GENERAL PLAN

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OPEN SPACE ELEMENT
OF THE
GENERAL PLAN

COMMUNITY DEVELOPMENT DEPARTMENT
FREMONT, CALIFORNIA
DECEMBER, 1973

FREMONT CITY COUNCIL

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GEOFFREY A. STEEL, VICE MAYOR
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OPEN SPACE ELEMENT

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RESOLUTION NO. 3351

RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF FREMONT AMENDING THE GENERAL PLAN BY THE
ADOPTION OF AN OPEN SPACE ELEMENT, INCLUD-
ING TEXT AND MAPS (GPA-71-1).

WHEREAS, pursuant to Sections 65302(e) and 65563 of the Government Code of the State of California, it is required that every city shall prepare, adopt and submit to the Secretary of the Resources Agency a local open-space plan for the comprehensive and long-range preservation and conservation of open-space land within its jurisdiction on or before December 31, 1973; and

WHEREAS, there has been prepared a proposal (GPA-71-1) to amend the General Plan of the City of Fremont through adoption of an Open Space Element, consisting of the following:

(A) A certain map entitled "Fremont General Plan - Open Space Element", as shown and set forth as Exhibit "A" attached hereto and made a part hereof; and

(B) Text consisting of Introduction, Goals for Open Space, Open Space for Natural Resources, Open Space for Managed Production of Resources, Open Space for Public Health and Safety, Open Space for Recreation, Open Space Implementation (including Conditions and Deductions, Acquisition, and Financing), Acquisition of Less Than Fee Interest, Special Purchase Methods and Strategies, Regulation, Open Space Zoning, Specific Area Analysis, Principles and Implementation Program, and General References (including Appendices "A", "B", and "C"), which text is shown and set forth as Exhibit "B" attached hereto and made a part hereof; and

(C) A certain map entitled "Fremont General Plan - Open Space Element - Urban Structure", as shown and set forth as Exhibit "C" attached hereto and made a part hereof; and

WHEREAS, on September 17, 1973, there were transmitted to approximately 300 interested persons and groups in the City, including property owners affected by the aforementioned proposals, letters giving notice of the times, places, and dates of study sessions and

public hearings to be conducted by the Planning Commission and this City Council, regarding said proposals; and

WHEREAS, the Planning Commission did, after due and proper notice published, hold public hearings on October 4, 1973, and on October 11, 1973, on said proposed amendment to the General Plan, and did on October 11, 1973, after said public hearings were concluded, did recommend the adoption of said proposed amendment to this City Council; and

WHEREAS, this City Council has, after due and proper notice published, held hearings on November 6, 1973, and on November 13, 1973, on said proposed amendment to the General Plan, as required by law.

NOW THEREFORE, BE IT RESOLVED, that the City Council of the City of Fremont does hereby adopt the said proposals as set forth above and in Exhibits "A", "B", and "C", as the Open Space Element of the General Plan, and that Resolution No. 3091, which adopted an interim open space element as required by state law, be and it is hereby rescinded.

BE IT FURTHER RESOLVED, that the Mayor and the City Clerk of the City of Fremont are hereby authorized and directed to endorse this amendment to the General Plan to show that it has been adopted by this legislative body, and the City Clerk is hereby authorized and directed to submit copies thereof to the Secretary of the Resources Agency of the State of California by December 31, 1973.

ADOPTED November 13, 1973 by the City Council of the City of Fremont by the following vote, to wit:

AYES: Councilmen Dillon, Lampert, Steel, Pimentel

NOES: None

ABSENT: Councilman Rhodes

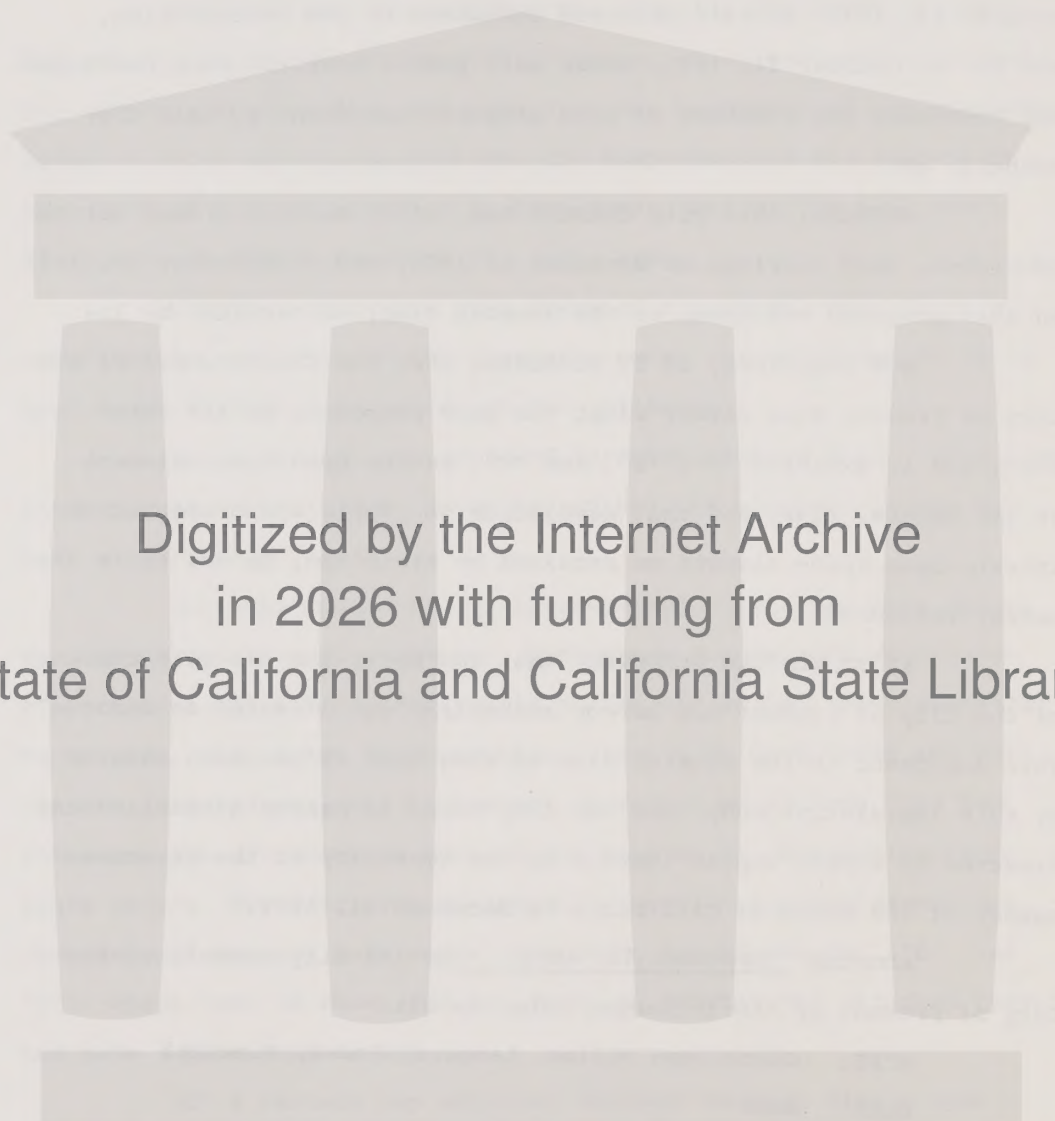
ATTEST:

Robert D. Nelson
City Clerk

Jack A. Pimentel
Mayor

APPROVED AS TO FORM:

Theodore R. Busler
Assistant City Attorney



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GOALS FOR OPEN SPACE

Goals one through four are already a part of the text of the Fremont General Plan.

1. The retention of the natural differences of hills, flatland and bay in the development of these regions.
2. The creation of a desirable visual image which would give identity to Fremont within the context of the Metropolitan Bay Region.
3. The preservation and enhancement of historic elements to give the future City continuity with the past.
4. The establishment of an integrated system of Open Space which will encircle the City and connect its several areas.
5. The establishment of an Open Space system which will provide for the preservation of natural resources, for the managed production of resources, for recreation and for the protection of public health and safety.

OBJECTIVES

1. To constantly seek and use a wide range of methods to implement Open Space programs.
2. To preserve areas of prime agricultural land.
3. To consider the accumulative impact of development on Open Space air sheds and water sheds in order to maintain and improve the quality of the air and water.
4. To preserve selected areas of flora and fauna for their ecologic, biotic, research, and educational values.
5. To utilize Open Space as a means of dealing with unstable soil areas such as slide areas, active earthquake fault zones and slopes too steep for urban development.
6. To preserve the natural physical features of the City in Open Space that give a visual structure to the City such as: the natural profile of the hill mass, the westerly faces of the hills readily visible from the flatlands, significant canyon areas, and the baylands.
7. To identify and maintain wide vistas and view corridors which establish the relationship of the hills to the urbanized areas.
8. To connect the Open Space of the hill areas to the Open Space of the bayland.

9. To preserve sufficient Open Space areas to meet the recreational needs of the community in order to accommodate a wide range of public and private outdoor activities in urban areas as well as natural areas.
10. To consider the needs of all income and ethnic groups in developing an Open Space plan.
11. To consider uses for open space other than those specifically required by State law.
12. To use Open Space planning as a means of preserving historic resources.
13. To recognize the environmental constraints of the Conservation Element in Open Space planning.
14. To recognize the importance that Open Space plays in an individuals's life.

IMPLEMENTATION PROGRAM

1. The City shall seek the preservation of open space by a combination of public regulations, public investments and public/private cooperative action.
2. The City's Open Space Program shall involve cooperation with regional and local districts and neighboring cities.
3. The City shall support the East Bay Regional Parks District and other regional groups and agencies in their efforts to preserve regional open space in Fremont and cooperate with them in the implementation.
4. The City shall establish a five-year open space acquisition program to be implemented over the next five years subject to yearly review as revenue sources change. Determination of priorities and changes in priorities shall be accomplished with public input (Appendix "C").
5. Areas determined to be of regional or City-wide significance for public use, which have not been acquired by other public agencies shall be considered for acquisition by the City.
6. The Open Space Zoning District text shall be adopted.

7. Beginning in January, 1974, properties to be zoned open space in conformance with the Open Space Element shall be specifically identified and considered in line with the following priorities:

- a. Areas in the hills subject to environmental constraints.
- b. Alameda Creek quarries and groundwater recharge areas.
- c. Lands below the ten-foot contour and underlaid by bay mud and/or Class VIII soil that are not in the industrial area.

Before any area is rezoned, informational meetings will be held in the areas affected to acquaint property owners with the regulations, in addition to the required public hearings. The rezoning program shall be completed by December 31, 1974.

Areas in the hills which are not covered by environmental constraints shall remain in conventional Agricultural (A) zoning until public services are available. "Target Plan" type studies should be conducted in such areas, prior to development, to insure compatibility with surrounding open space areas.

8. Steps should be immediately undertaken to determine the cost and feasibility of obtaining scenic easements or other such rights to those visually significant portions of the hill areas.
9. The area of the Northern Plain designed "Open space subject to further study" shall remain in conventional Agricultural (A) zoning, until more information is available on soil capability and other geological factors. Sources of this information shall include: The Seismic Safety Element, the detailed Soil Conservation Service Soil Survey of the flatlands and any other special studies. Considering the input of the Conservation Element, the Open Space Element and the Housing Element, the City should attempt to determine the relative value of the use of the Northern Plain for agriculture versus its use for housing. This should be viewed from local, regional and state-wide concerns. A Target Plan for the Northern Plain shall be prepared concurrent with this study. An interim report for the combined study shall be presented to the City Council on or before June 30, 1974, and the final report of the

combined study shall be ready for a public hearing before the Planning Commission on or before December 31, 1974.

In the interim, those lands designated "Open space subject to further study" shall remain in Agricultural Flood Plain (A-F) zoning.

10. Presently adopted standards for park dedication and park size and location shall be reviewed and updated by the Planning Commission and Recreation Commission in the light of the considerations of this Element and the input of other appropriate public bodies and the general public.
11. Further identification and preservation of important ecological areas within the City, especially in the hill areas, should be undertaken immediately.
12. Public access to important wildlife habitats should be provided where it will not damage such wildlife habitats.
13. Until the need for the Shoreline Freeway is fully documented and its effects upon the environment, especially the wildlife refuge and Coyote Hills, fully understood, it shall be eliminated from the Fremont General Plan.
14. Stream beds and creek corridors not within the Open Space Zone shall be regulated as if they were included in the zone. A clause shall be added to the problem use section of the Zoning Ordinance, to allow structures within 200 feet of a stream only with a use permit.
15. Some areas containing scattered pockets of slopes of 30% or greater may not all be included within the Open Space Zone. A clause shall be added to the problem use section of the Zoning Ordinance to allow structures on slopes of 30% or more only with a conditional use permit.

INTRODUCTION

Open Space has always been a major feature of the environment of Fremont. The purpose of the Open Space Element is to ensure that Open Space is a continuing factor in shaping future development of the City. In order to avoid the mistakes repeated time and again by other cities in California, this element will set down those considerations that should be made to direct the on-going urbanization of existing open lands within the City. The principles established support the intentions of the General Plan. Along with the Conservation Element, this examination of the role Open Space plays in the City's natural setting will assist civic leaders and the public in directing future growth of the City by providing them with a guide to those areas which are more appropriate for Open Space and which areas are better able to support other land uses of more intense development.

Open Space is not merely the "left over" gaps between built-up areas. Open lands within the City are as real as concrete, an element to be shaped, structured, used and valued. Open Space should have the status of other land uses, like residential, commercial and industrial.

The news of the day, and our own daily perceptions, increasingly inform us that perhaps a serious imbalance has resulted in our priorities. New understanding of our natural resources, including Open Space, have taught us that we are no longer dealing with an endless reserve that can be taken for granted even in a short-range view of the future. In order to foster a wiser approach to our society's accelerating land and resource consumption, mandates have been initiated by the State to each of the cities and counties of California to formally adopt plans and programs for the development of an Open Space system to restore this balance of priorities between conservation and development. This system is to serve a wide range of functions that are appropriate uses of areas that are regarded as principally open land. In the language of California State Law, Open Space can be used:

1. To preserve natural resources.
2. For the managed production of resources.
3. For outdoor recreation (including areas of outstanding scenic, historic, and cultural value).
4. For the protection of public health and safety — that is, protection from hazardous conditions such as earthquake fault, unstable soil areas, flood plains, etc. (Government Code Section 65560).

In addition to these, the importance is also recognized of a framework of Open Space to give a structure to the pattern of urbanization and to provide visual relief in intense urban areas. The following document examines these specific areas of concern and makes recommendations for action within each. The Open Space Element should be an important instrument in enhancing one of the most valued features of living in Fremont. First, however, it is essential to understand the directions this document must take in terms of goals and objectives.

OPEN SPACE FOR NATURAL RESOURCES

State law requiring the Open Space plan states that Open Space for Natural Resources include "areas required for the preservation of plant and animal life, including habitat for fish and wildlife species; areas required for ecological and other scientific study purposes; rivers, streams, bays and estuaries; and coastal beaches, lakeshores, banks of rivers and streams and watershed lands" (Government Code Section 65560).

Open Space for natural resources includes much of the Baylands area. The salt ponds, salt marshes and tidal flats, along with the open water of the Bay and major sloughs, are included on the Open Space Plan Map. Many of these areas provide habitat for wildlife, including three endangered species. Appropriately, almost all of the baylands are a part of the South San Francisco Bay National Wildlife Refuge. In the hill areas, major stream corridors with heavy vegetation are part of the Open Space system. Most of these areas are canyons with steep slopes leading to an intermittent stream that provides habitat for much of the hill area wildlife (Conservation Element Ecological Resources Map). Some of the canyon areas in accessible locations should be reserved for educational purposes.

OPEN SPACE FOR MANAGED PRODUCTION OF RESOURCES

Open Space for managed production of resources can include "agricultural lands and areas of economic importance for the production of food or fiber; areas required for recharge of ground water basins . . . and areas containing major mineral deposits" (Government Code Section 65560).

Three areas in Fremont involve managed production of resources.

1. A major portion of the Northern Plain, the largest remaining area in the City of Class I and II soils, still suitable for large scale agricultural production;
2. Alameda Creek and the Alameda Creek Quarry areas constitute a major groundwater recharge area (Map 5 Conservation Element). Fortunately, the aquifer recharge areas identified on the Water Resources Map (Map 5) of the Conservation Element are under control of Alameda County Water District or Alameda County Flood Control and Water Conservation District;
3. The salt ponds and the Baylands (Map 6 Conservation Element) and the Bay itself.

OPEN SPACE FOR PUBLIC HEALTH AND SAFETY

Areas which require special management or regulation because of hazardous or special conditions such as earthquake fault zones, unstable soil areas, flood plains, high fire risks, areas required for the protection of water quality, and water reservoirs and areas required for the protection and enhancement of air quality (Government Code Section 65560) can be dealt with through Open Space controls.

Unstable soils have generally been identified in the Conservation Element (Conservation Element Maps 1, 2 and 3). In accordance with the Conservation Element, all slopes over 30% and all Class VII and VIII soils shall be in an Open Space zone that restricts urban uses. Class VII and VIII soils are found in the hills and in the Baylands. Class VIII soils in the Baylands include Bay mud. An additional problem area involves lands below the 10-foot contour as pointed out in the Conservation Element. Until more is known about the safety of different types of urban uses below the 10-foot contour, those lowlands should be subject to Open Space controls. The problem is not quite as serious in industrial areas as it is in residential areas due to the lower concentration of population and to the flexibility in use and building types in industrial areas.

OPEN SPACE FOR RECREATION

Open space for outdoor recreation includes areas of outstanding scenic, historic and cultural value; areas particularly suited for park and recreation purposes, including access to shorelines, rivers and streams; and areas which serve as links between major recreation and open space reservations, including utility easements, banks of rivers and streams, trails and scenic highway corridors (Government Code Section 65560).

Park and recreation areas, trails, areas of scenic, historic and cultural value are identified on the existing **Recreation Element** of the Fremont General Plan. The **Recreation Element** map was made a part of the Interim Open Space Map when the Interim Open Space Map was adopted. This combination is reflected in the Open Space Element Summary Map, where specific open space areas to be used for public recreation are identified.

The development of these areas has been based upon existing adopted park standards and the park dedication formula. A body of experience has been accumulated with this element since its adoption in 1969. This experience should be reviewed in the light of its success or failure

in meeting its objectives and in view of new understanding of recreational activity patterns of urban populations. Much leisure behavior is now marked by spontaneity, choice and diversity. These situations might be more readily provided for by combining the neighborhood park standards with community park standard into a classification for all local parks. Park location and size should be based as much on what activities should occur in a park as well as how many people it should serve.

To date, analysis of the existing developed park lands shows that the City has fallen behind its own adopted standards for these areas (Appendix A). An inherent difficulty in the actual application of these is that they are stated in terms of **quantitative** areas and distances and reflect little consideration for the **qualitative** aspects of a recreational area. Analysis of the City's adopted park dedication formula shows that the City will continue to fall further behind without additional funding for its neighborhood and community parks. (See Appendix A) Land dedicated through park dedication formula should be evaluated for its usability to ensure that parcels dedicated are not just "left-over," undevelopable parcels.

Experience with the recreational plan, programs and policies suggests a need for the review and update of the 1) Park Standards and Dedication Formula, and 2) the Recreation Element Map, to meet some of the problems which have been identified. In addition, those areas identified on the Open Space Element Summary Map shall be subject to yearly review as the role of the East Bay Regional Parks District in acquiring some of these lands is clarified and the use of different funding sources changes.

OPEN SPACE FOR URBAN STRUCTURE

Open space for urban structure includes the areas which clarify the form of the City and the public spaces which give visual order to our environment and foster social interaction. This is a type of open space which is not required, by the Government Code, to be included in the Open Space Element. However, open space which clarifies the City's form and its public spaces plays a vital role in the City's everyday life.

A. FORM OF THE CITY

Every beautiful city has a clear comprehensible form as well as human intensity and variety. Frequently, the form will be an overwhelming geographic setting. San Francisco is a peninsula. Venice and Amsterdam are laced with waterways. Seattle and Stockholm are hilly places penetrated by bays and inlets.

Fremont is fortunate to have a specific geography which should be respected in all planning decisions, so that its geography may clearly be expressed in the form of the City.

Fremont is part of the plain which borders San Francisco Bay from Point Richmond to San Jose. It is edged by the bay, water and marshes and by the East Bay hills. At Fremont, these hills form a concave crescent to the bayshore with an accent at the Niles Canyon depression and at the Mission Peak high point. Alameda Creek connects the low canyon to the bay, and Coyote River once connected the south end of the high mountain to the bay. These elements of Bay Plain, Hill face and the relationship between them are the major features of the form of Fremont.

Retaining the marshes and hill face in open space, connected by open areas along the creeks at the north and south edges of the City, will preserve the geographic definition with the utmost clarity. These features form the open frame which has been an essential idea in all of the planning work of Fremont so far. As stated in the 1967 "701" Study and adopted as part of the Recreation Element, "The open frame is to be an area generally outlining or framing the natural perimeter of the City. By definition, it should be a continuous band of area with a dominant impression of openness. It is to be visually distinguished from the rest of the City and the surrounding cities by its open aspect and the type and intensities of its land uses."

"As envisioned, the open frame is justified as an element which would physically and visually define the City as an entity separate from neighboring cities; provide an area for outdoor recreational activities system and retain and carry forward Fremont's historically open appearance."

The perceptual and visual corridors by which the form is most evident should also be respected in all planning decisions so that the clear form may be a part of the every day experience of the City. The perceptual corridors consist of:

1. Fremont/Warm Springs Boulevard and Paseo Padre Parkway — a pair of major routes which traverse the City from end to end expressive of its place on the bay plain;
2. Mowry Avenue and Stevenson Boulevard — a pair of major routes which traverse the City from side to side expressive of its place between the bay edge and the hill face;
3. Washington Boulevard and Thornton Avenue (extended to Niles) — similar major routes which connect the major hill and urban features of Niles Canyon and Niles, and of Mission Peak and Mission San Jose. These two connections are made adjacent to other major physical features of the City — the quarry lakes at the edge of Niles and the quarry ridge adjacent to Mission San Jose.
4. The present BART line and its future extension traverse the City from end to end and is expressive of its place on the Bay Plain. Because of its elevation the BART trip, more than any other, discloses the entire City to the passenger.

Another perceptual element which should also be respected in all planning decisions is Central Park with Lake Elizabeth and the government-cultural center. From these open spaces, high points and buildings, all the features of the form of the City are evident.

B. PUBLIC SPACES FOR VISUAL ORDER AND SOCIAL INTERACTION

Public spaces which exist primarily for the purpose of visually ordering our environment, or for the purpose of fostering social interaction lie within the realm of human perception and subjectivity that has not been classified or quantified. These are the open spaces that can occur within the day-to-day urban areas and can contribute greatly to the quality of life within urban areas. Determining open space for urban structure is far less an exact science and tends to be less precise. Our basic purpose, too, is different in developing these spaces.

In the Conservation Element, we are dealing basically with man and his relationship to Nature; in the Recreation Element, we are primarily dealing with man's rehabilitation of his own body through active play; in the Urban Structure Element, we are essentially concerned with man and his relationship to mankind — man the social animal. For this reason, the open spaces considered in this section are located entirely within the urbanized areas of the City.

Four prototypical urban spaces are identified because there seems to be four essential environments within the highly developed sectors of the City which are likely to have large-scale public spaces within them. These are:

1. Public spaces within community core areas;
2. Public spaces within high-density residential areas;
3. Public spaces within low/medium density residential areas;
4. Movement corridor areas.

The locale of these various types of open spaces is designated on the Urban Structure Map. Each of these types has different characteristics related to its precise design.

Within the built-up areas of Fremont, a dominant concern with accommodating the automobile has resulted in a scarcity of truly urban public environments. A few isolated examples, such as the Hub shopping mall, offer some escape from auto-dominated areas into pedestrian oriented places. Within areas of public congregation at various levels of density, a more humane environment should be maintained by having streets and parking lots serve "people spaces" rather than overwhelm them.

The shape and scale of these spaces is, of course, related to the particular activity that is to be accommodated. A shopping mall, for example, demands a different configuration than a plaza in a civic center. There is no way to set down a manageable set of design criteria for all public spaces in every community core area of Fremont. A public plaza in Niles will obviously be very different from a public plaza in the Central Business District. Each would have a specific design response to a particular environmental setting. Few guidelines exist to assure City policymakers that public spaces of the appropriate scale, layout, furnishing and inter-relationship to surrounding

development. Indeed, when City officials are asked to respond to the proposed plan of a shopping center, for example, the standards for the layout of the parking areas are more completely understood, and can be evaluated in a more objective way than the layout of the pedestrian areas. Even in the location and layout of citywide, community and neighborhood parks, standards have been widely used over the years which are somewhat arbitrary and primarily consider the use of the area for traditional game sports. While the distance and population standards serve their function, they should not be the only method of determining park need. The City's historic resources list is an example of a concern that responds to opportunities rather than distance and population criteria.

There is little in the literature of planning that gives us adequate guidelines to the qualitative requirements for the planning of open spaces that we experience in our daily lives. For this reason, the following outline of characteristics of urban open spaces is to be regarded as a set of **performance standards** by which we can evaluate design proposals. Because of the difficulties of dealing with this type of space, this approach seems preferable to a set of more conventional design standards, wherein so many square feet of open space is required for a given number of people.

Each type of space is essentially different in the way it is **shaped** or defined, in the way it **functions** for its users, and in the way **security** is provided to its users.

In the near future, additional material will be developed which will illustrate examples and opportunities for development of the various types of spaces. As the nature of each kind of space is more fully understood, it is hoped that the **performance** standards will be refined as necessary to become the adopted guidelines for development of urban open spaces within the City.

CHARACTERISTICS OF OPEN SPACE COMPONENTS OF URBAN FORM

1. Public Spaces in Community Core Areas

Shaped: by surrounding buildings and streets.

Function:

- (a) to foster social interaction among people of different levels of familiarity;
- (b) to accommodate major public events;
- (c) to accommodate active and passive involvement with adjacent activities;
- (d) to establish the feeling of "an urban place."

Security: to establish a sense of safety from harm by:

- (a) other users of space;
- (b) persons occupying adjacent activity areas and walkways.

2. Public Spaces in High-Density Residential Areas

Shaped: by adjacent multi-level residential buildings and by adjacent streets.

- Function:**
- (a) to foster social interaction and familiarity with other residents of the building group;
 - (b) to provide open space to substitute for "backyard" space;
 - (c) to accommodate passive use or limited active use compatible with adjacent residences;
 - (d) to provide identity to and give a focal point for surrounding residential groups.

- Security:**
- (a) from upper level windows and balconies;
 - (b) from other users of space;
 - (c) from adjacent streets and walkways.

3. Public Spaces Low/Medium Density Residential Areas

- Shaped:** by adjacent streets or non-residential areas; well separated from adjacent residences.

- Function:**
- (a) to foster familiarity and social interaction amongst residents of a local neighborhood;
 - (b) to accommodate a wide range of active and passive recreational uses not accommodated in private backyards;
 - (c) to establish an image for a neighborhood, "a park."

- Security:**
- (a) from adjacent streets;
 - (b) from other park users.

4. Major Corridor Spaces

- Shaped:** by landscaping and adjacent structures along major lines of vehicular and pedestrian movement — existing and potential.

- Function:**
- (a) to foster a comprehension of the structure and inter-relationship of various districts of the City with each other and with major form elements;
 - (b) to give a visual order to the urbanized area of the City.

- Security:**
- (a) patrol
 - (b) other users

OPEN SPACE IMPLEMENTATION

Traditionally, outright acquisition has been the primary tool available to municipal agencies for open space preservation. Within the past five years, new tools have been made available to cities and counties; and for the most part, the courts have upheld the legality of these new tools. The power of zoning has been expanded, as has the scope of conditions and dedications that can be required at the time of development.

Open space preservation tools fall into three categories: (1) conditions and dedications attached to governmental approval of development; (2) acquisition; and (3) regulation. Because of the diversity of open space lands in Fremont, methods proposed for preservation should not be considered applicable in every instance and should be evaluated in respect to specific cases.

CONDITIONS AND DEDICATIONS

Fremont has used this method widely, particularly with respect to planned district and planned unit development approvals. When the City grants a developer "PD" zoning (which can mean higher density, more flexibility in site design, and mixture of uses), or "PUD" approval (which can mean more flexibility in site design), he has agreed to do more than the normal requirements. This can mean dedication and/or improvement of open space areas within the development, or payment of in-lieu fees for purchase of open space elsewhere.

Since 1970, the City has had a Park Dedication Ordinance. The present ordinance requires all builders of residential housing to either dedicate a certain amount of land for park purposes or pay an equivalent fee which goes into a park fund. Prior to adoption of the Park Dedication Ordinance, the City had received approximately 120 acres of park land through "PD" and "PUD" dedications, which includes all existing neighborhood parks. While few parks have been dedicated directly through the Park Dedication Ordinance, approximately \$286,000 in in-lieu fees has been collected.

The City has been divided into benefit areas so that money collected from a development will be used for park purposes in the area of that development. The City acquires full title to most lands obtained through the Park Dedication Ordinance. Park dedication revenue has been, and will continue to be, a major source of revenue. However, the standard Park dedication land and in-lieu fees should be the major source of land and revenue for local (community and neighborhood) parks. However, as Appendix "A" shows, the present formula for determining park dedication requirements will not provide enough land and/or revenue to meet adopted standards for neighborhood and community parks. Review of the formula and standards must consider the relationship between the two.

Park dedication in-lieu funds cannot be counted on as a steady source of income as they are based on the rate of new construction.

ACQUISITION

Direct acquisition of land for open space purposes provides the greatest degree of public control over use of land.

FULL FEE ACQUISITION

Essentially this means public purchase and ownership of full title to the land and all rights associated with the land. The amount of open space land which can be preserved using this method will be limited by the amount of revenue the City and other agencies have available and are willing to appropriate for open space purposes. To overcome this problem, a number of variations on the use of this tool can be employed, including such tools as purchase-leaseback and purchase-saleback which will be discussed later.

In the past, the City has used outright purchase mostly to acquire community parks. In the case of Centerville, Irvington, Mission San Jose and Niles Community parks, City funds were used in conjunction with Federal funds from the Department of Housing and Urban Development Open Space Grants. Central Park acquisition was financed in part through HUD Open Space Grants. However, the HUD Open Space Grant Program has been almost totally phased out.

Money can always be allocated from the General Fund to finance open space; but with the many demands placed on the General Fund, it is wise to point out other sources. In addition, present State legislation places limitations on the maximum tax rate the City can impose on property owners, making use of such methods as the tax override difficult.

FINANCING FULL FEE ACQUISITION

Bonds: The issuance of general obligations bonds requires two-thirds majority of the votes cast on the proposition. Both the interest and the principal of the bonds are payable from ad valorem property taxes and are guaranteed by the municipality. However, there have been cases of bond issue elections in California that received approval of more than half the voters, but were defeated because they failed to receive the necessary two-thirds majority approval required by law. Use of general obligation bond financing is further limited by local government debt ceilings imposed by State law. At present, the City may incur no more bonded indebtedness than 15% (approximately 50 million) of the total assessed valuation. Fremont's present indebtedness (about 4.6 million) is less than 10% of the bonded indebtedness limit, or less than 2% of the total assessed valuation.

Another type of bond which local governments may issue are revenue bonds. Unlike a general obligation bond, their repayment is not backed or guaranteed by the taxing power of the government. Instead, they are backed by the revenue to be derived from the project for which they are issued. Issuance of revenue bonds does not generally require voter approval. In addition, revenue bonds are not subject to the debt ceiling imposed with regard to the issuance of general

obligation bonds. Revenue bonds, however, are of rather limited use for open space purposes, since few open space areas can generate sufficient revenues to repay them. Their use could be applied to financing such open space facilities as golf courses, marinas and possibly with purchase/leaseback arrangements.

Special Local Taxes: These can include construction taxes, real estate transfer taxes, utility taxes and motel taxes.

Fremont presently has a construction tax of which two-thirds goes into the General Fund and one-third into a Capital Improvement Fund.

The City also has a motel tax called a "transient occupancy tax," which goes into the General Fund.

Utility taxes can only be imposed by charter cities; Fremont is a General Law city.

Since 1967, State legislation has permitted cities and counties to impose a limited tax on the transfer of real property. The tax is limited to \$1.10 per \$1,000 of sales price. Increases in this tax would require the passage of new State legislation. Such a bill, the Park and Open Space Acquisition Bill of 1973, has been introduced in the State Legislature this year and is still in committee. It would impose a 1% State tax on all real estate transfers, with an exemption for the first \$30,000 of any owner-occupied dwelling unit. It is estimated that such a tax would produce about a hundred million dollars for open space land acquisition. The County already has its own real estate transfer tax. Enactment of such a tax at City level would require special action of the Council.

Earmarking revenues from these sources or more traditional tax sources can be another way of funding local open space programs. A specified percentage of the revenues received from the sales tax or from building permit fees, for example, could be automatically credited to a fund to be used only for open space purposes.

Federal and State Grants: Several Fremont parks were acquired with HUD matching grants, where funds for up to 50% of the project costs were available; but these funds are now almost nonexistent. In effect, they have been replaced by Revenue Sharing, which gives local governments large blocks of money to be used for many different purposes. Park acquisition is one, and Fremont has already allocated Revenue Sharing monies for park acquisition. Giving open space acquisition priority in the Revenue Sharing budget should continue.

Although the State has few funds available for local acquisition programs at this time, the State Beach, Park, Recreational and Historical Facilities Bond Act of 1974 will be placed before the voters in 1974. If approved, it will provide local governments with funds for land acquisition. The Alameda County Parks Advisory Committee has been designated as the group to handle distribution of these funds among local agencies. They have already begun taking testimony on priorities for allocation of funds if the bond issue passes. If the bond act passes, Fremont's share could be used in many different ways, including being shared with East Bay Regional Park District for Fremont's regional facilities, or being earmarked for specific projects.

Tax Foreclosures: Lands which have gone tax delinquent and have been acquired by the public through foreclosure proceedings offer a number of possibilities for local open space programs. Some of these lands may be appropriate additions to local park systems, while others such as wetlands provide important wildlife habitat which should be protected by local programs. Foreclosure of tax delinquent lands can also be used in other ways to support open space preservation efforts. Money received from the sale of tax delinquent lands could be earmarked specifically for open space land acquisition programs. Under certain conditions, tax delinquent lands acquired by the public could also be exchanged for other lands of equal value but with greater open space importance.

Gifts: The tax advantages of gifts of land to local governments arise from the fact that Federal Income Tax laws allow deductions of up to 30% of a taxpayer's gross annual income for charitable donations including gifts of land to public agencies and publicly supported nonprofit organizations. If the value of the land donated exceeds 30% of the donor's gross annual income, the remainder can be carried forward and credited as a tax deduction over a period of up to five years if necessary. This can reduce the net cost of the donations by as much as 50% of the value of the land. The net cost of the donation is reduced even further when it is considered that the land donor avoids the capital gains tax which would have to be paid if the land had been sold for development. Thus, the total tax savings for the donor, in some instances could actually exceed the net after-tax profit which would have been received from the sale.

ACQUISITION OF LESS THAN FEE INTEREST IN LAND

It may not be necessary to purchase fee interest in open space land. Acquisition of less than fee interest has often been suggested as a method of reducing costs of preserving open space lands. Unfortunately, the limited experience with such methods has sometimes indicated that the difficulties of administering them balance any potential savings and initial costs. The terms Scenic Easement, Open Space Easement, Conservation Element and Development Rights are used more or less interchangeably in open space literature. Although there are subtle distinctions among the specific definitions of these terms, they are nearly the same in intent. An easement, generally defined, is a written privilege which one person, public body, etc., has with regard to land owned by another person. The two basic types of easements of concern here are Scenic Easements and Access Easements.

Access Easements acquired by a public body, such as the City, guarantee the right of the public to enter upon private land for certain specified purposes. Use of Access Easements for open space purposes might include allowing public use of trails on certain private lands. Scenic Easements involve a different kind of right, the right of another person or entity to restrict the ways in which a landowner may use or otherwise alter the appearance of his land. The general purpose of Scenic Easements is to keep the use or appearance of a particular area or piece of land in its present open condition. Such easements could cover the protection of scenic areas, preservation of wildlife habitat, conservation of farm land, protection of watershed lands, etc.

Easements may be acquired to run either in perpetuity or for a specified period of years. In order for the landowner to qualify for property tax relief under State law, however, the minimum period of time for such an agreement is 10 or 20 years (depending on which of two separate enabling acts is used). The agreement may provide for automatic yearly extension or for extension by mutual consent. One problem common to virtually all types of such easements is that if the land involved is in the immediate path of development, the cost of acquiring such rights will be almost equal to that of purchasing the entire fee. There are advantages to less than fee acquisitions, however; and where appropriate, these techniques should be employed. Where the land is not under heavy development pressure, the initial costs are substantially less than for fee acquisition. The property remains in private ownership so owners are not displaced, and the government does not have to act as a large landholder. The property also remains on the tax rolls although the assessed value should certainly be lowered.

SPECIAL PURCHASE METHODS AND STRATEGIES

Purchase/Leaseback

When purchase/leaseback is employed, the public purchases fee title to open space land and then leases it back to the previous owner or to others, subject to restrictions which will ensure that the land's open space qualities will be preserved. Farmlands, for example, could be purchased and then leased back to the original owner with the restriction that the land only be used for farming. Initially, the use of purchase/leaseback would be nearly as expensive as normal fee title acquisition. Over a period of time, however, the public would be getting its money back in the form of lease payments. If the lease arrangement were continued long enough, the total amount of money received in lease payments could eventually exceed the original costs of the land to the public. The City just recently leased a large undeveloped area of Central Park East to a flower grower for a one year lease at approximately \$21,000 a year.

Purchase/Saleback

Purchase/saleback involves public purchase of the fee title to open space land. The land is then resold with restrictions attached which ensure that the land's open space qualities would be preserved. The land could normally be resold to the original owner, or under certain circumstances, it might be necessary or desirable to resell it to another party.

Lease/Purchase

As a means of circumventing some of the restrictions the State puts on the fiscal policies of local governments, local governments have sometimes made use of a financing device called lease/purchase. Typically with lease/purchase, the public enters into a long-term agreement to lease land for a period of time long enough to let the owner recoup his investment. Included in the lease agreement are provisions which give the public options to purchase the land at various prices during the course of the lease.

Installment Purchase

An installment purchase enables a public agency to spread cost of acquisition over a number of years. Title, and sometimes possession, is retained by the seller until the final payment is made. Variations involve partial transfers of title and possession as installments are paid. While this method has a number of advantages for both the seller and purchaser, it requires the seller's voluntary consent. Installment sales cannot be utilized in eminent domain action.

Condemnation

Landowners are sometimes unwilling to sell voluntarily unless paid a price far in excess of appraisal of value obtained by the governmental unit wishing to acquire the land. In such cases, the government must condemn the property at a price determined by a judicial proceeding. Condemnation proceedings are almost always more expensive than a voluntarily negotiated settlement because of the high cost that can be involved in any legal action. Acquiring agencies, thus, should always attempt to arrive at an out-of-court settlement. The power of local governments to condemn and acquire land for the purchase of providing public park and recreation areas is clearly established. Condemnation may also be used for certain other public purposes related to open space, such as acquisition of land for flood control purposes.

Aside from these few purposes expressly authorized by statutes enacted by the State Legislature, there is considerable uncertainty regarding the use of eminent domain to achieve other open space objectives. It is uncertain, for example, whether local governments can condemn prime agricultural lands so that the lands could be resold or leased subject to restrictions which would ensure that they would continue to be used for agricultural purposes.

Those who support a broader interpretation of the law can argue that the California constitution and statutes clearly indicate that open space preservation is an important public objective. Furthermore, the Legislature has granted local governments broad powers with regard to open space preservation which include, by implication, the power to condemn land or partial interests in land, for a wide variety of open space purposes. Those who would support a more narrow interpretation of the law argue that the open space purposes for which condemnation may be used are limited to those expressly stated by State law.

Resolution of these uncertainties will have to come either from the State Legislature or from the courts.

OPEN SPACE REGULATION AND ZONING

It is possible to preserve land in permanent open space through zoning, but some economic use of the land must remain. Usually, large minimum parcel sizes, allowing one or two dwellings, are employed and certain open space uses, such as agriculture; and private recreation facilities are allowed. In addition, uses within an open space zone can be subject to special regulations.

AGRICULTURE

Most agricultural zoning is accomplished by large minimum parcel size. In June, 1972, Alameda County adopted a 100-acre minimum parcel size agricultural zone in unincorporated territory in the southern part of the County. Marin County rezoned 65,000 acres in the area north of Tomales Bay for 60-acre minimum parcels.

The 20-acre agricultural preserve zoning in Napa County was recently upheld by the Superior Court of the County of Napa in the case, *Napa Valley United Farmers v. County of Napa*. In an unpublished decision dated February 17, 1971, the court said: "The principal purpose for the enactment of said ordinance is found and determined to be the preservation of prime agricultural lands within the fertile areas of the County of Napa; . . . preservation of world renowned vineyards; . . . and protection of such agriculture lands against the intrusion of urban developments incompatible with agricultural land uses."

Where agricultural zoning is part of a comprehensive plan of a county or city for agriculture because of location, soil condition, irrigation, climate or topography, California courts probably will not invalidate this local legislative judgment. The existence of the Williamson Act is a State legislative judgment that the courts could rely on to help determine public interest. The courts of California accept legislative findings of regulations which are in the public interest without interjecting themselves into this decision process as do the courts of some other states.

OTHER RESOURCE PRESERVATION

Following an exhaustive three years study of the effects of filling the Bay, its tidelands and marshes, the San Francisco Bay Conservation and Development Commission (BCDC) plan and regulatory procedures were established and enacted into State law in 1969. These planning studies showed that substantial amounts of bay fill would adversely affect the environment of the Bay Area including such considerations as the scenic attractiveness of the Bay Area for its residents and tourists, the shellfish and fin fish populations of the Bay and the nutrient base upon which they depend, the water quality, sewage dispersal, tidal patterns, and also, such indirect considerations as population congestion, transportation efficiency and balanced land use planning. The thoroughness of these background studies paid handsome dividends when the legislation was challenged by a landowner who sought a permit from BCDC to continue filling his partially submerged non-navigable parcel of tideland in the Bay. The permit was denied by BCDC on the grounds that further filling of this parcel would have the adverse impacts noted above. The denial was sustained by a California District Court of Appeal in *Candlestick Properties, Inc. v. San Francisco Bay Conservation and Development Commission*. The Court held that the regulations were a valid exercise of the regional agency's police power. The Court relied on the Legislature's determination the "the Bay is the most valuable single natural resource of the entire region and changes in one part of the Bay may also affect all other parts," as well as on the statutory definition of the public interest in the Bay.

In zoning to preserve natural resources, the land to which the restriction applies must be qualitatively different from unrestricted land if construction and alteration of the land are prohibited because of adverse off-site impacts likely to occur.

REGULATION FOR PRIVATE RECREATION

In the well known California Supreme Court case, *McCarthy v. Manhattan Beach*, beachland in private ownership was placed in a "beach-recreation" zone. However, the public was not given access to the beach without the landowner's consent. There was no evidence that this restricted use would be confiscatory if the landowner charged admission to his beach. In fact, the Court stressed the fact that the plaintiff had failed to show that he could not make a profit from the property as regulated. Furthermore, the Court's decision was based on several factors. On the City's Master Plan, the beach had been identified as an important community asset which should be protected. Also, it was not suitable for residential use because of the risk to structure posed by high waves and ocean storms. Thus, the case rested on both protection of an existing recreational resource and the prevention of activities threatening the public health and safety.

REGULATION FOR PUBLIC HEALTH AND SAFETY

Regulations to minimize threats to public health and safety enjoy almost a special presumption of constitutionality. In the field of land use control prohibition and development in hazardous areas has not been as wisely used as it could be; therefore, the following discussion of the constitutionality of flood plain regulation is given to illustrate the considerations applicable to any program to regulate development within a hazardous area, whether flood plain, or earthquake fault zone, unstable soil area, or areas presenting high fire risk. California encourages the adoption of local flood regulation according to minimum State standards, by withholding State appropriations for the costs of acquiring lands, easements and rights-of-way associated with Federal Flood Control projects, if the local agency fails to adopt adequate flood regulations. In 1972, the legality of flood plain zoning was upheld in *Turner v. County of Del Norte*. The plaintiff brought an action for inverse condemnation for loss of the use of his property for proposed subdivision by the county within the flood plain zoning ordinance. The ordinance limited use of the land to agricultural, recreational, temporary mobile home and similar low intensity uses requiring no permanent construction. The plaintiff's land had been severely damaged in previous floods. The Court upheld the regulation.

In a flood area, services and facilities built at public expense would have to be built to higher standards and are likely to be damaged in a flood, so any construction in a flood way generates unjustified and extraordinary public expenditures. Also, persons residing in flood prone areas may have to be rescued during floods at public expense. In other words, government can argue that it is impossible for any individual to assume all the risks and to guarantee that his land would not generate extraordinary public expenditures that exceed his ability to repay in taxes or special assessments.

The same reasoning can apply the provision of necessary public improvements and services to other hazardous areas, such as building roads on unstable soils.

ZONING

Because of the variety of open space lands in Fremont, a single open space zone must cover a variety of environmental situations. Requiring that open space uses within an open space zone comply with performance standards (criteria that must be met before a use can be allowed), allows for the simplicity of a single zone, while providing flexibility for the different land areas it must cover.

A proposal for a use within an open space zone would have to show it could meet the performance standards dealing with restrictions on building on a slope over 30%, within 200 feet of a stream, on or in the path of a landslide, on or near a seismic hazard, on low-lying lands or on unstable soils, etc.

The open space zone would not remove all economic use of land, but rather would allow uses of an open and low intensity nature. Inherently, the open space zone would ensure that uses allowed there would not cause significant environmental impact. Therefore, open space zoning would work along with the Environmental Impact review process. The Open Space zone is comprehensive and designed to handle a range of low-intensity uses. Its concept coincides somewhat with the concept of the Mixed Use-Low Intensity Development Policy adopted by Council in November, 1970. The Open Space zone has been designed to eliminate the need to use planned unit development or planned district procedures.

The Open Space Element Map, the Environmental Constraints Map and the USGS Landslide Map shall be used to determine what specific parcels should be included in an Open Space zone. One exception would be the area referred to as Indian Hill, which has received specific Open Space designation by previous Council action. It shall be included in an Open Space zone.

AGRICULTURAL PRESERVE

Under the Williamson Act, lands being used for farming or other open space use have been placed under a contract whereby the owner agrees not to develop his property for ten years. His land is then assessed, for tax purposes, based on the land's value as agricultural land rather than on its speculative "highest and best use." Agricultural preserves have been used widely in Fremont and will continue to be used, particularly under the open space zone.

Local governments and school districts are entitled to repayment of at least a portion of the funds lost due to lower assessment of land in agricultural preserves. (Agricultural Subvention Money) Payments to cities and counties are made on a scale which favors preservation of prime land located near cities. (See Appendix "B")

SPECIFIC AREA ANALYSIS

The impact of the Open Space Element can be demonstrated by looking at the specific situation of those areas most affected. This includes the major undeveloped areas of the City.

Alameda Creek Corridor

The Alameda Creek Corridor provides a visual, as well as a functional link between the baylands and the hills. It also provides a vital open space function in the urban areas it traverses, as well as serving as a groundwater recharge area and flood control device. Equestrian, hiking and bicycle trails presently exist along the banks of the Flood Control Channel from Coyote Hills to Niles Canyon. Continued effort should be made to concentrate open uses, both public and private, along the creek channel, like the existing Niles Community Park. A link should be created between the Northgate Community Park and the Alameda Creek Corridor. This could be accomplished as a condition of development. The Alameda Creek quarries have been proposed for a regional recreational facility. Development of the quarries as a major aquatic recreational facility would greatly expand the recreation function of the corridor.

Great potential for the corridor exists in the Northern Plain. Further consideration should be given to the relation between future land use in the Northern Plain and the creek corridor. Public open space uses and public uses of an open space nature in the Northern Plain should be integrated with the Alameda Creek Corridor to reinforce the open frame concept and to provide for more efficient use of open space lands.

The Northern Plain area of Fremont represents one of the City's largest undeveloped areas in the flatlands. At the same time, most of the Northern Plain is now in agricultural use and appropriately so, as it represents one of the last large blocks of undeveloped prime agricultural land, in use, in Alameda County. Some of the landowners in the Northern Plain have claimed that it is no longer "economically feasible" for them to continue farming. The continuance and economic feasibility of agricultural production depends to a great deal on the size of a land holding; a farm has to be big enough to warrant the shipping and packing operations, possibly a hundred acres for some crops, up to 1,000 acres for others. The Northern Plain is blessed with the best of soil and almost ideal climate that allows near year-round production of some crops such as lettuce. Two or three crops per year of some products are not uncommon. While County Agriculture Commissioners have advised the City in recent hearings on the value of Fremont's farm land, they pointed out the difficulty of determining economic feasibility as it depends on many things like the type of crops, taxes, management and efficiency of the individual operation (with all these factors at optimum level agricultural uses appear to be profitable). A critical question is whether "economically feasible" means "I can no longer earn a living from farming my land" or "The profits of selling my land to a speculator or developer are greater than the profits from farming." While the courts recognize the right to "reasonable" use of land, the legal status of a "speculative use" is highly questionable. As pointed out in the discussion on implementation methods, it may be possible to zone large portions of the Northern Plain for permanent agricultural use; but normal regulatory powers might not be strong enough to hold the land against the economic and political pressures for development.

Until more is known about the impact of urbanization in the Northern Plain, it should be considered an open space area subject to further study. Actions previously taken by the City Council point toward the uncertainty that exists about going ahead with development in the Northern Plain now. On May 22, 1973, the Council passed Resolution No. 3275 indicating that approval of new developments served by the Alvarado Treatment Plant should consider whether

the property is annexed to the Sanitary District and whether adequate off-site trunk sewers are available to serve the development. Council has also directed staff to revise the Northern Plain area plan to reflect the impact of the deletion of the Shoreline Freeway (to reduce the "701" holding capacity of the Northern Plain). This project has not been completed.

Further study of the Northern Plain should cover the following areas:

1. Information gained from the Seismic Safety Element or other similar study.
2. Information gained from the detailed Soil Conservation Service Soil Survey of the flatlands.
3. An analysis of available information on agricultural production and a concentrated effort to gain more information on agricultural production in urban areas. The relative social and economic value of the use of the Northern Plain for agricultural use versus its use for housing.
4. Information gained from further analysis of existing and new studies of the cost and general feasibility of expanding all public services to accommodate development in the Northern Plain.

Furthermore, immediate steps should be taken to determine what areas of Class I and II soil in the Northern Plain could be acquired through a purchase/leaseback arrangement and what the initial and long-range cost and revenue implication of this action would be.

Baylands

With much of Baylands to be included in the South San Francisco Bay National Wildlife Refuge, the question of what areas are to be designated Open Space is not as critical an issue as it is in the North Plain or hill areas. Even so, the wildlife refuge itself should come under open space controls should any other area of significant habitat in the Baylands that may be identified in the future; but where the protection of important wildlife areas are concerned, control by public agencies is best accomplished by acquisition. The City should make every effort to cooperate with the appropriate Federal agencies and their efforts to acquire property in the Bay lands and to set up appropriate programming for the wildlife refuge.

Drawbridge has been considered a regional facility for some time. However, a recent comprehensive study of potential sites for acquisition by East Bay Regional Parks District ("Overview" plan) deleted Drawbridge from consideration. (This study is yet to be finalized and accepted by their board, however.) Any review of the Recreation Element should consider the potential of Drawbridge as a city-wide facility, if not acquired by another agency. Alternatively, inclusion of Drawbridge in the wildlife refuge should be encouraged.

Other matters aside, there are physical problems in the Baylands that need due consideration. The Seismic Safety Element, for instance, should consider the problems of lands below the 10-foot contour and should plot the depth of Bay mud and analyze its capacity to support different uses.

In the Baylands, the open space designations shown on the Open Space Summary Map, cover those areas included in the wildlife refuge and such areas as Drawbridge, previously identified as a possible park site. Pending the results of further study, all lands identified in the Conservation Element as Class VIII soils are included. In addition, all the salt ponds, salt marshes and tidal flats are included. All areas of Class VIII soils along with all salt ponds and the area to be included in the Wildlife Refuge will be subject to open space zoning, in conformance with the Open Space Summary Map and Conservation Element.

Hills

Major portions of the hills are included in the Open Space Plan and can be classified into three categories:

1. Open Space for Public Recreation including those areas recognized on the Open Space Element Map — Hidden Valley, the Galindo-Higuerra Adobe and Mission Peak, Mill Creek, Morrison Canyon, Vargas Plateau and Niles Canyon;
2. Open Space for Public Safety including those areas of Class VII and Class VIII soil, slopes over 30%, landslides and earthquake fault; and
3. Open Space for Urban Form, visual aspects of the hills forms which help to give the City an urban structure.

Areas for public use, of course, must be purchased, but in some cases only easements may be necessary as for trails in canyon areas. Open Space for public safety can be adequately controlled through an open space zone. Scenic easements can be used to acquire rights to the areas of the hills which are visually significant. However, as it was pointed out earlier, the cost of purchasing full title may be only slightly more than purchase of easements. Some of the visually significant areas, will be difficult to build on for safety reasons and are therefore subject to open space zoning.

The Open Space Summary Map delineates the majority of the steeper hill areas as open space. Those hill areas covered by environmental constraints should be placed in an Open Space Zoning District. However, open space zoning will still allow limited construction of residential and agricultural structures. Therefore, steps should be undertaken immediately to determine the feasibility of obtaining easements over those visually prominent areas of the hills, such as the ridgetops and the western face of the hills.

Acquisition of development rights, scenic easements and the use of purchase/leaseback are methods that could be used in addition to full-fee acquisition. While open space zoning is feasible, serious consideration should also be given to purchase/leaseback arrangements.

Open Space Element Map

The Open Space Element Map shows the areas of the City to be considered for devotion to Open Spaces uses. These areas are largely covered by environmental constraints (see Environmental Constraints Map — Conservation Element). Some are included because they are visually significant (see Urban Structure Map). Some of the lands are included for both reasons. There are few areas included merely because they are visually significant, but it is difficult to precisely pinpoint those areas designated open space merely because they are visually significant, because of the small scale of the map. However, comparing the Urban Structure Map with the Environmental Constraints Map will give a general idea. No area should be included in an Open Space Zone merely because it is visually significant. Environmental constraints should be the basis for Open Space zoning. The majority of the areas shown on the map as Open Space will be included in the Open Space Zone.

The Map also shows existing public Open Space areas, and by symbol, proposed public Open Space areas. As has been discussed earlier, portions of the Northern Plain Area are being considered Open Space subject to further study.

GENERAL REFERENCES

"Catalog of Open Space Preservation Tools" (preliminary draft of Part I), Santa Clara County Planning Department, December, 1972.

"How to Implement Open Space Plans for the San Francisco Bay Area" Volumes I, II, III, Association of Bay Area Governments, June, 1973.

"Open Space Zoning Handbook," Assembly Select Committee on Open Space Lands, California Legislature, April, 1973.

"Conservation Element" — City of Fremont, September, 1973.

APPENDIX A

TABLE I. STANDARDS FOR DETERMINING PARK NEEDS

TABLE II. CONVERSION TABLE FOR CALCULATING PARK NEEDS

TABLE III. CITY OF FREMONT PARK DEDICATION FORMULA

APP A
TABLE I
SUMMARY TABLE

PARK NEED FOR PRESENT POPULATION (125,000)							GENERAL PLAN PARK NEEDS FOR HOLDING CAPACITY POPULATION - 315,465 (MEDIAN)						NATIONAL PARK AND RECREATION ASSOCIATION STANDARD (FOR COM- PARISON PURPOSES)
AVERAGE EXISTING STANDARD- (WEIGHTED AVERAGE BASED ON EXISTING DEVELOP- MENT)	EXISTING PARK NEED FOR PRE- SENT POPULA- TION	PARK ACREAGE UNDER CITY (OR OTHER AGENCY) CONTROL			ADDITIONAL ACREAGE & DEV. NEEDED FOR PRE- SENT POPULATION		AVERAGE STANDARD FOR GP HOLDING CAPACITY (WEIGHTED AVERAGE)	TOTAL ACREAGE NEED FOR 315,465 POPULA- TION	LAND NEEDED IN ADDI- TION TO PRESENT NEED (ADDI- TIONAL POPULA- TION)	LAND TO BE OB- TAINED BY PARK DEDICA- TION GENER- ATED BY ADDI. 190,465 POPULA- TION	ACREAGE NEED FOR ADDI. 190,465 NOT PRO- VIDED THROUGH PARK DEDI- CATION	PROJECTED ACREAGE SHORTAGE FOR 315,465 POPULATION	
		DEV.	UNDEV.	TOTAL	ACREAGE TO BE PUR- CHASED	ACREAGE TO BE DEVEL- OPED							
AC/1,000 POPULATION*	(Acres)	(Acres)	(Acres)	(Acres)	(1-4) (Acres)	(1-2) (Acres)	AC/1,000 POPULATION	(Acres)		**			AC/1,000 POPULATION
NEIGHBORHOOD PARKS 1.57	1	2	3	4	5	6	7	8	9	10	11		2.5
COMMUNITY PARKS 1.846	196	81	14	95	101	115	1.47	464	268	240	28	129	
CITY-WIDE PARKS 8	231	12	96	108	123	219	1.73	547	316	282	34	157	2.5
	1000	170 ***	242	412	588	830	8	2524	1524	NA	1524	2112	5
SUBTOTAL													
CITY FACILITIES	1427	263	352	615	812	1164	-	3534	2107	522	1586	2398	
REGIONAL PARKS 10 ****	1250	935	-	935	315		10	3155	1905	NA	1905	2220	
TOTAL CITY AND REGIONAL FACILITIES	2677	1198	352	1550	1127	1721		6689	4012	522	3491	4618	

* See Table II.

** See Table III.

*** Includes acreage covered by Lake Elizabeth; does not include historical parks with total acreage of 35.83 acres.

**** Does not include acreage to be included in wildlife refuge or that proposed in the "Overview" plan for East Bay Regional Park District.

Note: Figures have been rounded to nearest acre.

TABLE II

CONVERSION TABLE FOR CALCULATING PARK NEEDS

Neighborhood and Community Park standards are established in the General Plan Policy Text, and are based on density.

Density du/Ac	Based on No. of Dwelling Units	Based on Population		Weighted Average (Approximate)	
	Ac/1000 Dwelling Units	Pop. per du (Est.)	Ac/1000 Pop.	Existing Develop.	Holding Capacity

NEIGHBORHOOD

18+	2.2	2.3	9.5		
6.5-18	4.3	3.0	1.4	<u>1.57</u>	<u>1.47</u>
6.5 or less	6.1	3.6	1.7		

COMMUNITY

18+	2.6	2.3	1.1		
6.5-18	5.0	3.0	1.67	<u>1.846</u>	<u>1.73</u>
6.5 or less	7.2	3.6	2.0		

AVERAGE

CITY-WIDE

18+	8.4	2.3	8		
6.5-18	24	3.0	8		<u>8</u>
6.5 or less	28	3.6	8		

REGIONAL

18+	23	2.3	8		
6.5-18	30	3.0	8		<u>8</u>
6.5 or less	36	3.6	8		

The average requirement for neighborhood or community parks needs for all densities is determined by using a weighted average. This takes into consideration the ratio of dwelling units (or population) under 6.5 du/Ac to dwelling units (or population) above 6.5 du/Ac for both existing development and the General Plan holding capacity:

Present Ratio of du/Ac @ 6.5 du/Ac = 1/3
to du/Ac @ 6.5 du/Ac

General Plan holding capacity ratio of du/Ac @ 6.5 du/Ac = 1/1.3
to du/Ac @ 6.5 du/Ac

TABLE III

CITY OF FREMONT PARK DEDICATION FORMULA

<u>Density</u>	<u>Amount Required Per Dwelling Unit</u>	<u>Yield</u>
6.5 du/ac	579 sq. ft.	3.67 ac/1000 pop.
6.5-10.9 du/ac	460 sq. ft.	3.52 ac/1000 pop.
11.0 - 14.9 du/ac	380 sq. ft.	2.91 ac/1000 pop.
15.0 - 18.9 du/ac	310 sq. ft.	2.36 ac/1000 pop.
19.0 - 22.9 du/ac	260 sq. ft.	2.54 ac/1000 pop.
23.0 - 26.9 du/ac	220 sq. ft.	2.184 ac/1000 pop.
27.0 - 34.9 du/ac	200 sq. ft.	<u>1.99 ac/1000 pop.</u>
Average park area dedication		2.74 ac/1000 pop.

APPENDIX "B"

Agricultural Preserve

The California Land Conservation Act of 1965 (The Williamson Act) is based upon legislative findings that preservation of agricultural land is necessary to conserve the State's economic resources; to maintain the agricultural economy of the State, and to assure an adequate food supply for future residents. Discouragement of premature and unnecessary conversion of agricultural land to urban uses and discouragement of discontinuous urban development patterns which unnecessarily increase the costs of community services are additional purposes. Preservation of agricultural lands is declared to be important due to their public value as open space and as an important physical, social, aesthetic and economic asset to existing or pending urban or metropolitan developments. Emphasis is also placed upon importance of scenic beauty of scenic highway corridors and wildlife habitats.

The Act defines the term "agricultural preserve" as an area devoted to either agricultural use, recreational use, or open space use, and compatible uses as defined by the governing body of the city or county by resolution after a public hearing. "Open space use" applies to land within scenic highway corridors, wildlife habitat areas, salt ponds, managed wetland areas, and submerged areas.

Agricultural preserves may be established by cities having a general plan by resolution after duly noticed public hearing. The purpose of the establishment of preserves is to define the boundaries of the areas within which the city will be willing to enter into contracts with enforceable restrictions.

The general rule is that agricultural preserves must be at least 100 acres in area; two or more parcels may be combined to meet the requirement if they are contiguous or in common ownership. Smaller preserves, however, may be established if the city finds that they are necessary due to the nature of the agricultural enterprises in the area, and that the establishment of smaller preserves is consistent with the general plan.

Cities may limit the use of agricultural land by contract. The land must be devoted to agricultural use and located in an area designated as an agricultural preserve. The term "agricultural use" encompasses recreational and open space use.

Contracts must provide for the exclusion of non-agricultural uses and uses not compatible with agricultural uses. They must be for an initial term of no less than 10 years and must provide that on their anniversary dates, or such other annual date as they may specify, a year shall be added automatically to the initial terms unless notice of nonrenewal is given as provided in the Act.

Contracts under the Williamson Act cannot be cancelled except pursuant to a request by the landowner, who must petition the council for cancellation. The contract cannot be cancelled until the city has held a public hearing on the matter; notice of the hearing must be published and must be mailed to all owners

of land under contract if any portion of their land is situated within the same agricultural preserve and within one mile of the exterior boundary of the land upon which the contract is proposed to be cancelled. Any property owner in the city may protest the cancellation to the city.

Before the council tentatively approves any cancellation, the county assessor must determine the full cash value of the land as though it were free of the contractual restriction. He must multiply this value by the most recent county ratio of assessed value to full cash value, which is 25% beginning with the lien date for the 1971/72 fiscal year. He must then certify the product to the council as the cancellation value of the land for the purpose of determining the cancellation fee. Then the council must determine and certify to the county auditor the amount of the cancellation fee which the landowner must pay the county treasurer as deferred taxes upon cancellation. This fee is 50% of the cancellation value of the property; however, if the county ratio of assessed value to full cash value was lower at the time the contract was entered into, the lower ratio is used to compute the cancellation fee.

The council may approve the cancellation of a contract only if it finds that the cancellation is not inconsistent with the purposes of the Act and is in the public interest. The existence of an opportunity for another use of the land is not sufficient reason for cancellation, and a potential alternative use may be considered only if there is no proximate, noncontracted land suitable for the proposed use of the contracted land. Likewise, the uneconomic character of an existing agricultural use is not sufficient reason for cancellation of the contract, and the uneconomical character of the existing use may be considered only if there is no other reasonable or comparable agricultural use to which the land may be put.

The presence of an enforceable restriction, the types of which are discussed above, brings into play special methods of valuation of land for purposes of assessment of the property. The normal rule is that the assessor must assess all property subject to general property taxation at 25% of its full cash value. Where open space land is subject to an enforceable restriction, however, except where the land is used for production of timber for commercial purposes, the land must be valued by the capitalization of income method without reference to sales data on lands.

The statute defines income as fair rent which can be imputed to the land (where sufficient rental information is available) or that which the land being valued reasonably can be expected to yield under prudent management and subject to applicable enforceable restrictions. Income is further defined as the difference between revenue and expenditures, which generally means the difference between the amount of money which the land can be expected to yield annually on the average from any use permitted under the terms of the enforceable restriction and the outlay or average annual allocation of money that can be fairly charged against the revenue expected to be received during the period used in computing such revenue.

When income is determined, the value of the land is determined by dividing income by the capitalization rate. Assessed value is determined by applying the ratio of 25% to the value of the land.

The capitalization rate is the sum of four components: (1) an interest component based on the yield rate for long-term U.S. Government bonds; (2) a risk component, which is based on location and characteristics of the land, the crops to be grown, and the provisions of any lease or rental agreement to which the land is subject; (3) a component for property taxes, which is a percentage equal to the estimated total tax rate for the assessment year times the assessment ratio; and (4) a component for amortization of investment in perennials over their estimated economic life when total income from land and perennials exceeds the yield from other typical crops grown in the area.

Assessed value of open space land subject to an enforceable restriction is, therefore, computed by the following formula:

$$\begin{aligned} \text{Assessed Value} &= 0.25 \times \frac{\text{Income}}{\text{Capitalization Rate}} \\ &= 0.25 \times \frac{\text{Income}}{\text{Interest Component} + \text{Risk Component} + \text{Property Tax Component} + \text{Amortization of Investment in Perennials Component}} \end{aligned}$$

Prior to December, 1971, the state law did not authorize replacement from the State General Fund of revenues lost to cities and counties on account of reduced assessment of lands under enforceable restrictions. Legislation adopted at that time now provides for subventions which partially replace the lost revenues. Eligible incorporated cities are allocated \$3.00 per acre for prime agricultural land and \$0.50 per acre for all other land devoted to open space uses.

In the case of the City of Fremont, even if claims by local government agencies do not exceed the budgeted amounts, it is evident that the state subventions are not sufficient to cover the tax losses arising from the differences between the current assessments of lands under Williamson Act contracts and assessments of the same lands had they not been under contract. The first subvention claimed by the City of Fremont is computed at \$13,373.50, which is \$40,323.63 less than the net loss in tax revenues indicated above for the 1971/72 year. This sum of \$40,323.63 may be viewed as the net present dollar cost to the City of Fremont for a one year period resulting from valuation of land under enforceable restrictions for agricultural or other open space purposes - the reduction in tax revenues minus replacement subventions. Because the state did not have adequate funds to cover all subvention claims, the claims were pro rated and the City of Fremont received \$5,601.00 of its \$13,373.50 subvention claim.

APPENDIX C

OPEN SPACE PRESERVATION PRIORITY

The Recreation Commission has recommended that the priorities for acquisition of open space of regional significance be as follows:

A

Alameda Creek Quarries
Ardenwood
Coastal Range Peaks
Hidden Valley
Niles Canyon
Ridgetop Trails
Vargas Plateau

B

Alameda Creek Corridors
Coyote Hills Park Expansion
Galindo-Higuerra Adobe
Mill Creek
Mission Hills Quarry Area
Morrison Canyon

C

Drawbridge
Dumbarton Bridge Piers
Giles Estate
Shoreline Recreation Area

U.C. BERKELEY LIBRARIES



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